

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Welker	Team: Team # 8	CCRB Case #: 200818711	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 12/28/2008	Location of Incident: § 87(2)(b) and § 87(2)(b)	Precinct: 105	18 Mo. SOL 6/28/2010	EO SOL 6/28/2010	
Date/Time CV Reported Mon, 12/29/2008 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/31/2008 11:19 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			105 PCT
2. POM Andrew Torres	04417	943881	105 PCT
3. POM Michael Whooley	06036	943951	105 PCT
4. POM Jason Vonfricken	14347	943935	105 PCT
5. Officers			105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Shavnarin Ghani	29857	936662	105 PCT
2. POM Luis Pineda	30980	937291	105 PCT
3. POF Celica Alfaro	08865	927843	105 PCT
4. POM Matthew Maggor	16087	930624	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b) at § 87(2)(b)	§ 87(2)(b)
B. POM Andrew Torres	Force: PO Andrew Torres used a chokehold against § 87(2)(b) at § 87(2)(b)	§ 87(2)(b)
C. An officer	Force: An officer struck § 87(2)(b) with a blunt instrument at § 87(2)(b)	§ 87(2)(b)
D. Officers	Discourtesy: Officers spoke rudely to § 87(2)(b)	§ 87(2)(b)
E. POM Michael Whooley	Force: PO Michael Whooley used pepper spray against § 87(2)(b) at § 87(2)(b)	§ 87(2)(b)
F. POM Jason Vonfricken	Off. Language: PO Jason Vonfricken made remarks to § 87(2)(b) based upon race at § 87(2)(b)	§ 87(2)(b)

Case Summary

On December 28, 2008, § 87(2)(b) called 911 and was transferred to IAB to file a complaint on behalf of her brother-in-law, § 87(2)(b) (encl. 4A). On December 31, 2008, the case was referred to the CCRB (encl. 4B-4C).

On December 28, 2008, at approximately 5:30 a.m. PO Andrew Torres and PO Michael Whooley of the 105th Precinct responded to a dispute at § 87(2)(b) in Queens. The following allegations resulted from the officers' actions:

- **Allegation A-Force:** Officers used physical force against § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation B-Force:** PO Andrew Torres used a chokehold against § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation C-Force:** An officer used a blunt instrument against § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation D-Discourtesy:** Officers spoke rudely to § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation E-Force:** PO Michael Whooley used pepper spray against § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation F-Offensive Language:** PO Jason Vonfricken used offensive language against § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)
§ 87(2)(b) is a § 87(2)(b) old-black male with black hair and brown eyes. He is 6'2" tall and weighs 240 pounds.

CCRB Testimony

On January 28, 2009, the CCRB interviewed § 87(2)(b) (encl. 5A-5F). On December 28, 2008, at approximately 5:30 a.m. § 87(2)(b) got into a verbal dispute with his wife, § 87(2)(b) and she called the cops. § 87(2)(b) admitted that he was intoxicated. PO Torres and PO Whooley arrived at § 87(2)(b)'s home. The officers spoke with § 87(2)(b) and § 87(2)(b) separately. Then PO Whooley asked § 87(2)(b) if there was someplace he could go. § 87(2)(b) was yelling at PO Whooley and refused to calm down because he felt disrespected by PO Whooley. § 87(2)(b) asked the officers if they were going to arrest him and they said no. At that point, § 87(2)(b) said that he was going to leave. PO Whooley told him that the only way he was leaving was either with the police officers or in an

ambulance. § 87(2)(b) called 911 and asked for a supervisor to escort PO Torres and PO Whooley out of his home. After he hung up the phone, PO Whooley told § 87(2)(b) to turn around numerous times, which he refused to do. PO Torres and PO Whooley approached § 87(2)(b) and pushed him to the ground.

§ 87(2)(b) landed with his hands under his stomach. The officers told him to put his hands behind his back five to six times, which he refused to do. PO Whooley and PO Torres continued to try and grab his hands. Then PO Torres sat on § 87(2)(b)'s back and put him in a chokehold. PO Torres' arm was around § 87(2)(b)'s neck. § 87(2)(b) told the officers that he could not breathe and he started to wheeze. While § 87(2)(b) was in a chokehold, § 87(2)(b) felt an unidentified officer hit him with an unknown object three to four times in the right elbow area. He heard an unidentified officer say, "Give me your fucking arms." Then PO Whooley pepper sprayed him. After he was pepper sprayed, the officers handcuffed him. As the officers escorted § 87(2)(b) out of his home, they pushed him against the doorframe. As § 87(2)(b) was walking outside, he felt someone pull his pants down so that he was just in his underwear. An unidentified officer pushed § 87(2)(b) on the ground and sat on him.

When the ambulance arrived, § 87(2)(b) was placed on a stretcher. PO Alfaro was in the ambulance with § 87(2)(b). § 87(2)(b) was screaming in the ambulance. Multiple unidentified police officers were standing at the door of the ambulance and they told § 87(2)(b) to "shut the fuck up, calm the fuck down." As § 87(2)(b) was sitting himself up on the stretcher, PO Alfaro punched him in the stomach. An unidentified individual poured water on § 87(2)(b)'s face and he thought they were water boarding him. § 87(2)(b) was escorted to § 87(2)(b). § 87(2)(b) sustained a small laceration and bruising on his right elbow as a result of this incident. After a few hours in the hospital, PO Vonfricken arrived. When nobody was looking, PO Vonfricken said to § 87(2)(b) "What the fuck is wrong with you nigger?" PO Vonfricken also called § 87(2)(b) a "stupid cocksucker."

Complainant/Witness: § 87(2)(b)
§ 87(2)(b) is a § 87(2)(b)-old black female with brown hair and brown eyes. She is 5'1" tall and weighs 170 pounds.

CCRB Testimony

On February 12, 2009, the CCRB interviewed § 87(2)(b) (encl. 6A-6F). On December 28, 2008 approximately 5:00 a.m. § 87(2)(b) walked with § 87(2)(b) from her apartment downstairs to § 87(2)(b)'s apartment after she heard a commotion. § 87(2)(b) was lying with his hands underneath his stomach on the kitchen floor. PO Whooley was straddling § 87(2)(b)'s buttocks and PO Torres was straddling § 87(2)(b)'s head. The officers were asking § 87(2)(b) for his arms, which he refused to give. § 87(2)(b) said that he could not breathe. PO Whooley pepper sprayed § 87(2)(b). Then PO Pineda and PO Ghani arrived and started beating § 87(2)(b). They hit him with a nightstick and stomped on him. In her initial statement to IAB, § 87(2)(b) said that officers beat § 87(2)(b) with flashlights. § 87(2)(b) was already in handcuffs when the officers were hitting him. At that point, § 87(2)(b) ran up to her apartment and called 911. When she returned downstairs, officers carried § 87(2)(b) out of the apartment, dragged him down the front steps, and dropped him in the grass. § 87(2)(b) did not go to the ambulance when § 87(2)(b) was placed in the ambulance. The ambulance was parked a few homes away from where § 87(2)(b) was standing.

Witness: § 87(2)(b)
§ 87(2)(b) is a § 87(2)(b)-old Hispanic male with brown hair and brown eyes.

CCRB Testimony

On February 12, 2008, the CCRB interviewed § 87(2)(b) (encl. 7A-7D). On December 28, 2008, at approximately 5:00 a.m. § 87(2)(b) and § 87(2)(b) went downstairs to § 87(2)(b)'s apartment when they heard a commotion. § 87(2)(b) was on his back on the kitchen floor. PO Whooley was sitting on his feet. PO Torres was sitting on § 87(2)(b)'s chest. § 87(2)(b) said that he couldn't breathe. After a few minutes, PO Pineda and PO Ghani arrived and they immediately began hitting § 87(2)(b). PO Pineda or PO Ghani stomped on § 87(2)(b) three times. An unidentified police officer hit § 87(2)(b) with an unidentified object. § 87(2)(b) believes that the object was a flashlight. After § 87(2)(b) was handcuffed, the officers dragged him out of the apartment and his pants fell off.

Witness: § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old black male with black hair and brown eyes. He is 6'0" tall and weighs 175 pounds. § 87(2)(b) is an EMT with the FDNY.

CCRB Testimony

On April 17, 2009, the CCRB interviewed § 87(2)(b) (encl. 8a-8F). On December 28, 2008, at approximately 5:30 a.m. EMT § 87(2)(b) responded to § 87(2)(b). When he arrived at the scene, § 87(2)(b) was in handcuffs and two police officers escorted him to the ambulance. More than two police officers had to physically assist § 87(2)(b) onto the stretcher because he refused to get on the stretcher and get in the ambulance. § 87(2)(b) resisted by moving his arms and upper body. EMT § 87(2)(b) described § 87(2)(b) as irate and uncooperative. § 87(2)(b) cursed and threatened EMT § 87(2)(b) and police officers. EMT § 87(2)(b) was unable to provide a description of the officers who were assisting § 87(2)(b) into the ambulance. PO Alfaro stood at the door of the ambulance and tried to talk to § 87(2)(b) but he was uncooperative. EMT § 87(2)(b) observed that § 87(2)(b) had a minor abrasion on his elbow, but it was not bleeding. § 87(2)(b) complained about his eyes, but he refused to let the EMTs examine his eyes or flush them out. § 87(2)(b) smelled like alcohol and he told EMT § 87(2)(b) that he had consumed a large amount of vodka. EMT § 87(2)(b) was at the scene for approximately 15 to 20 minutes before he took § 87(2)(b) to the hospital. He did not see officers punch § 87(2)(b). He did not recall whether officers used profanity with § 87(2)(b). Officers did not pour water on § 87(2)(b)'s face.

Additional Witness Contact Attempts:

§ 87(2)(b) missed her scheduled interview with the CCRB on February 11, 2009. On February 12, 2009, and February 19, 2009, the CCRB sent two please call letters to § 87(2)(b). Between February 17, 2009, and February 23, 2009, the CCRB called § 87(2)(b) three times at various times during the day and was unable to leave messages because there was not a voicemail option. § 87(2)(b) has not responded to the CCRB (encl. 22A-22J).

NYPD Statements

Subject Officer: PO ANDREW TORRES

- PO Torres is a § 87(2)(b)-old Hispanic male with brown hair and brown eyes. He is 5'11" tall and weighs 275 pounds.

- On December 28, 2008, PO Torres was scheduled to work sector patrol with PO Whooley from 11:15 p.m. to 7:50 a.m. He was dressed in uniform and assigned to a marked vehicle.

Memo Book

PO Torres had the following entries in his memo book regarding this incident: "0526: 52, § 87(2)(b). 0536: 90X, 0543 84@52F. 0606: 85@147-22 232 St. 0631: 10-92 from 52F. 0635: en Route to § 87(2)(b) 0815: Depart Hospital w/o perp. 0835: 84 S.H" (encl. 9A-9B)

CCRB Testimony

PO Andrew Torres was interviewed at the CCRB on May 4, 2009 (encl. 9B-9F). On December 28, 2008, at approximately 5:36 a.m. PO Torres and PO Whooley responded to a dispute at § 87(2)(b). PO Whooley entered the residence and PO Torres stayed outside with § 87(2)(b). Upon talking with § 87(2)(b) PO Torres immediately noticed that his breath smelt strongly of alcohol. PO Torres also observed that § 87(2)(b) was slurring his words and appeared dazed. After a few minutes, PO Whooley came outside and told PO Torres that § 87(2)(b) had been drinking heavily and acting violently towards § 87(2)(b). PO Whooley and PO Torres decided that § 87(2)(b) should not go back into his home because he was intoxicated, and they did not want the situation to escalate further. The officers asked § 87(2)(b) if there was somewhere else he could stay for the night. § 87(2)(b) became extremely irate, and started to yell and use profanity towards the officers. § 87(2)(b) approached PO Whooley, getting about one inch from the officer's face. § 87(2)(b) also bumped his chest into PO Whooley in an intimidating manner. PO Whooley took a step back, put his arm out and told § 87(2)(b) to stop bumping him and yelling at him.

§ 87(2)(b) then went inside his house and called 911. § 87(2)(b) threw the phone across the room, and then walked towards the kitchen. The officers followed § 87(2)(b) into the kitchen and § 87(2)(b) splashed the contents of a drink in PO Whooley's face. PO Torres grabbed § 87(2)(b) by his shoulder, and PO Whooley grabbed § 87(2)(b) somewhere else on his upper body. § 87(2)(b) started flailing his arms. PO Torres and PO Whooley struggled with § 87(2)(b) for less than a minute before pulling him to the ground. After falling to the ground, § 87(2)(b) rolled onto his stomach, and hid his arms under his body so the officers could not handcuff him. PO Whooley and PO Torres struggled on the ground with § 87(2)(b) for approximately four minutes. PO Whooley pepper sprayed § 87(2)(b) and PO Torres called for back-up. PO Torres continued to struggle with § 87(2)(b) for another minute or so, at which point other PO Ghani and PO Pineda arrived. With the assistance of the other officers, PO Torres and PO Whooley were able to handcuff § 87(2)(b). PO Torres did not sit on § 87(2)(b)'s back, nor did any other officers. PO Torres did not put § 87(2)(b) in a chokehold, nor did any other officers. PO Torres did not hit § 87(2)(b) with a flashlight or any other object, nor did other officers.

Upon handcuffing § 87(2)(b) PO Torres ran out of the house because he had pepper spray in his eyes. After receiving treatment for his eyes, PO Torres observed other officers take § 87(2)(b) out the front door of the residence. PO Torres did not recall seeing officers strike § 87(2)(b) against the frame of the front door. PO Torres stated that § 87(2)(b) was wearing pants when he was brought outside by the officers, but his pants kept falling down because he was not wearing a belt. PO Torres denied that the officers pulled down § 87(2)(b)'s pants. EMS had not yet arrived at the incident location when § 87(2)(b) was first brought outside, so an officer had § 87(2)(b) sit down on the grass. PO Torres did not recall who this officer was, and he denied that this officer pushed § 87(2)(b) on the ground. EMS arrived a few minutes

later, and both PO Torres and § 87(2)(b) walked into the ambulance and sat down. § 87(2)(b) continued to act belligerently once inside the ambulance. PO Torres did not see any officers punch § 87(2)(b) while he was in the ambulance. PO Torres and PO Whooley escorted § 87(2)(b) to the hospital. PO Torres did not use profanity with § 87(2)(b) at any point during this incident, nor did other officers.

Subject Officer: PO MICHAEL WHOOLEY

- *PO Whooley is a § 87(2)(b)-old white male with brown hair and brown eyes. He is 5'9" tall and weighs 155 pounds.*
- *On December 28, 2008, PO Whooley was scheduled to work sector patrol with PO Torres from 11:15 p.m. to 7:50 a.m. He was dressed in uniform and assigned to a marked patrol car.*

CCRB Testimony

On June 4, 2009, the CCRB interviewed PO Whooley of the 105th Precinct (encl. 10A-10D). On December 28, 2008, at approximately 5:30 a.m. PO Whooley and PO Torres responded to a dispute at § 87(2)(b). PO Whooley and PO Torres initially spoke with § 87(2)(b) and § 87(2)(b) separately. § 87(2)(b) informed PO Whooley that § 87(2)(b) was intoxicated and they he had tried to drive. She also told PO Whooley that § 87(2)(b) took her cell phone and would not give it back to her. The officers then spoke with the couple together. § 87(2)(b) was talking loud and became belligerent. At one point, § 87(2)(b) came within inches of PO Whooley. PO Whooley extended his arm out and told § 87(2)(b) to keep an arm's length distance. § 87(2)(b) wanted the officers to leave the house. § 87(2)(b) also called 911 and told the operator that police officers were harassing him. PO Whooley and PO Torres decided that § 87(2)(b) was very intoxicated, which posed a threat to himself and his family. PO Whooley told § 87(2)(b) that they were going to call an ambulance for him and he refused to cooperate. PO Whooley told § 87(2)(b) that he could walk out of the house himself or the officers would cuff him for their safety. § 87(2)(b) told the officers to handcuff him. At that point, PO Torres and PO Whooley grabbed § 87(2)(b)'s arms to handcuff him. § 87(2)(b) resisted by pulling his arms away violently.

PO Torres and PO Whooley grabbed § 87(2)(b)'s arms and pulled him to the ground. § 87(2)(b) placed his hands underneath his stomach so that officers could not cuff him. PO Whooley pepper sprayed § 87(2)(b) but he still refused to put his hands behind his back. PO Torres called for back up. When PO Ghani and PO Pineda arrived, PO Torres and PO Whooley had one of § 87(2)(b)'s hands in handcuffs. § 87(2)(b) still had one hand underneath his body. PO Pineda helped the officers handcuff § 87(2)(b). PO Torres and PO Whooley never sat on top of § 87(2)(b) nor did other officers. PO Torres and PO Whooley did not place § 87(2)(b) in a chokehold, nor did other officers. Officers did not use any additional objects besides pepper spray to assist them in handcuffing § 87(2)(b). PO Whooley did not use a flashlight or any other object to hit § 87(2)(b) nor did any other officers. At no point did § 87(2)(b) state that he couldn't breathe. PO Whooley did not use profanity with § 87(2)(b) nor did other officers. After § 87(2)(b) was handcuffed, PO Whooley and other officers escorted him out of the house. PO Whooley did not push or slam § 87(2)(b) against the door frame, nor did other officers. When the officers were escorting § 87(2)(b) out of his home, he continued to resist by moving his body around. While he was walking out of the house, his pants fell down. PO Whooley did not pull his pants down, nor did other officers. PO Whooley did not push § 87(2)(b) in the front yard, nor did other officers. PO Whooley was present when § 87(2)(b) was placed in the ambulance, but he did not assist in placing § 87(2)(b) in the ambulance. PO

Whooley stood at the back door of the ambulance. No officers used profanity with § 87(2)(b) in the ambulance. PO Whooley did not see PO Alfaro or any other officers punch § 87(2)(b)

Subject Officer: PO SHAVNARIN GHANI

- *PO Ghani is a § 87(2)(b)-old Asian male with black hair and brown eyes. He is 5'2" tall and weighs 145 pounds.*
- *On December 28, 2008, PO Ghani was scheduled to work sector patrol with PO Pineda from 11:15 p.m. to 7:50 a.m. He was dressed in plainclothes and assigned to a marked vehicle. PO Ghani has the following memo book entries regarding this incident. "0606: 1085 @ § 87(2)(b) § 87(2)(b) 0607: 84 w/ sector Adam."*

CCRB Testimony

On May 20, 2009, the CCRB interviewed PO Shavnarin Ghani of the 105th Precinct (encl. 12A-12E). On December 28, 2008, at approximately 6:00 a.m. PO Ghani and PO Pineda were the first officers to respond to a 10-85 at § 87(2)(b) in Queens. When they arrived at the scene, they saw PO Torres and PO Whooley struggling to handcuff § 87(2)(b) who was on the floor in the kitchen. PO Torres and PO Whooley had § 87(2)(b)'s left arm. § 87(2)(b)'s right arm was underneath him. PO Ghani tried to grab § 87(2)(b)'s right arm. PO Ghani did not hit § 87(2)(b) with a flashlight or any other object, nor did other officers. PO Torres did not sit on § 87(2)(b) nor did any other officers. PO Torres did not place § 87(2)(b) in a chokehold, nor did other officers. It took the officers three to five minutes to handcuff § 87(2)(b). Once § 87(2)(b) was handcuffed, the officers lifted him up and escorted him outside. PO Ghani did not see officers push or slam § 87(2)(b) into the door jam as he was leaving the house. PO Ghani did not see officers pull down § 87(2)(b)'s pants. PO Ghani did not use profanity with § 87(2)(b) nor did other officers. When PO Ghani exited the house, § 87(2)(b) was sitting in the front yard cursing at officers. PO Ghani did not push § 87(2)(b) nor did other officers. PO Ghani stood between five to ten car lengths away from the ambulance when officers escorted § 87(2)(b) to the ambulance. PO Ghani never approached the ambulance.

Subject Officer: PO LUIS PINEDA

- *PO Pineda is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. He is 5'7" tall and weighs 215 pounds.*
- *On December 28, 2008, PO Pineda was scheduled to work sector patrol with PO Ghani. PO Pineda was dressed in uniform and assigned to a marked vehicle.*

CCRB Testimony

On May 19, 2009, the CCRB interviewed PO Luis Pineda of the 105th Precinct (encl. 11A-11F). On December 28, 2008, at approximately 5:30 a.m. PO Pineda and PO Ghani responded to a 10-85 at § 87(2)(b). When they entered the location, they saw PO Torres and PO Whooley struggling to handcuff § 87(2)(b) who was resisting on the kitchen floor. § 87(2)(b) had his hands underneath his body while he was lying on his stomach. PO Torres and PO Whooley were instructing § 87(2)(b) to stop resisting and give them his hands. PO Torres and PO Whooley were not sitting on top of § 87(2)(b). PO Pineda assisted the officers by trying to grab § 87(2)(b)'s right arm. At one point, PO Pineda felt § 87(2)(b) touch the holster for his gun. PO Pineda did not hit § 87(2)(b) with any objects, nor did other officers. PO Pineda did not place § 87(2)(b) in a chokehold, nor did other officers. PO Pineda did not recall if § 87(2)(b) said that he couldn't breathe. § 87(2)(b) was yelling and cursing. PO Pineda did not use profanity with § 87(2)(b) nor did other officers. After § 87(2)(b) was handcuffed, he still physically resisted by moving his body around. While § 87(2)(b) was

exiting the house with police officers, PO Pineda did not push or slam § 87(2)(b) into the door jam, nor did other officers. § 87(2)(b)'s pants were falling down. Officers did not pull § 87(2)(b)'s pants down. PO Pineda did not push § 87(2)(b) outside, nor did other officers. Officers escorted § 87(2)(b) to the ambulance. § 87(2)(b) refused to get into the ambulance or lie down on the stretcher. § 87(2)(b) was making threats to the police officers and using profanity. PO Alfaro did not punch § 87(2)(b).

Subject Officer: PO CELICA ALFARO

- PO Alfaro is a § 87(2)(b)-old Hispanic female with brown hair and brown eyes. She is 5'7" tall and weighs 160 pounds.
- On December 28, 2008, PO Alfaro was scheduled to work sector patrol with PO Maggor from 11:15 p.m. to 7:50 a.m. She was dressed in uniform and assigned to a marked vehicle.

CCRB Testimony:

On May 21, 2009, the CCRB interviewed PO Celica Alfaro of the 105th Precinct (encl. 13A-13D). On December 28, 2008, at approximately 6:00 a.m. PO Alfaro and PO Maggor responded to a 10-85 at § 87(2)(b). When they arrived at the scene, § 87(2)(b) was in handcuffs on the front lawn. § 87(2)(b) was lying on the ground. He was combative and cursing. PO Alfaro was present when § 87(2)(b) was placed in the ambulance. She did not punch § 87(2)(b). She did not use profanity with § 87(2)(b) nor did other officers.

Subject Officer: PO JASON VONFRICKEN

- PO Vonfricken is a § 87(2)(b)-old white male with brown eyes. PO Vonfricken is bald. He is 5'7" tall and weighs 220 pounds.
- On December 28, 2008, PO Vonfricken was scheduled to work conditions from 7:05 a.m. to 3:40 p.m. He was dressed in uniform and assigned to a marked car.

CCRB Testimony:

On July 24, 2009, the CCRB interviewed PO Jason Vonfricken of the 105th Precinct (encl. 14A-14D). On December 28, 2008, at approximately 8:00 a.m. PO Vonfricken relieved two police officers at § 87(2)(b). PO Vonfricken was guarding § 87(2)(b). He stayed with § 87(2)(b) at the hospital for approximately 45 minutes before taking him to central booking. § 87(2)(b) was calm while PO Vonfricken was at the hospital. PO Vonfricken did not say to § 87(2)(b) "What the fuck is wrong with you nigger." He did not say, "Stupid cocksucker."

Witness Officer: PO MATTHEW MAGGOR

- PO Maggor is a § 87(2)(b)-old white male with red hair and blue eyes. He is 5'11" tall and weighs 158 pounds.
- On December 28, 2009, PO Maggor was assigned to sector patrol with PO Alfaro from 11:15 p.m. to 7:50 p.m. He was dressed in uniform and assigned to a marked vehicle.

CCRB Testimony

On May 20, 2009, the CCRB interviewed PO Maggor of the 105th Precinct (encl. 15A-15D). On December 28, 2009, at approximately 6:00 a.m. PO Maggor and PO Alfaro responded to a 10-85 at § 87(2)(b). When they arrived at the scene § 87(2)(b) was sitting on the front lawn in handcuffs. § 87(2)(b) kept rolling over from his sitting position. § 87(2)(b) was yelling and screaming. PO Maggor was not present at the back of the ambulance when § 87(2)(b) was in the ambulance. He could not see into the ambulance. PO Maggor did not have

physical contact with § 87(2)(b) He did not see if PO Alfaro had physical contact with § 87(2)(b) § 87(2)(b)

Additional Police Officers

PO Bryan Smith and PO Anthony Alesia of the 105th Precinct were also interviewed regarding this incident. It was determined from their statements and memo book entries that they did not witness any aspects of this incident (encl. 16A-17E).

Medical Records

The ambulance call report for § 87(2)(b) indicates that § 87(2)(b) was intoxicated. He told EMS that he drank two thirds of a bottle of Barcardi. § 87(2)(b) was very uncooperative and verbally abusive towards the police and EMS. § 87(2)(b) had a minor abrasion to his right elbow. Presumptive diagnosis was alcohol abuse. § 87(2)(b)'s medical records for § 87(2)(b) indicate that he complained of right elbow pain. § 87(2)(b) was agitated and uncooperative in the hospital. The medical records note that he was angry and screaming out of control. § 87(2)(b) was transferred to psychiatric ward because he was verbally abusive and manipulative (encl. 18A-18V).

NYPD Documents

Sprint

According to the Sprint, § 87(2)(b) called 911 at 5:32 a.m. stating that her husband was intoxicated. Sector Adam from the 105th Precinct responded to the scene and called for additional units. At 6:10 a.m. § 87(2)(b) called 911 and reported that officers were beating her cousin and that he can't breathe. EMS was at the scene at 6:15 a.m. and the prisoner was transported to § 87(2)(b) (encl. 19A-19E).

Disposition of Arrest for Incident

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a notice of claim with the City of New York as of November 17, 2009, with regard to this incident (encl. 23A).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3).

Subject Officer CCRB History

- In his two-year tenure with the NYPD, PO Torres does not have any substantiated allegations in his CCRB history. In his two-year tenure with the NYPD, PO Whooley does not have any substantiated allegations in his CCRB history. In his two-year tenure

with the NYPD, PO Vonfricken does not have any allegations in his CCRB history (encl. 2A-2C).

Conclusions and Recommendations

Identification of Subject Officers

- Multiple officers from the 105th Precinct admitted to using physical force against § 87(2)(b) § 87(2)(g)
- § 87(2)(b) identified PO Torres by his shield as the officer who used a chokehold against him. § 87(2)(g)
- An unidentified police officer allegedly used a blunt instrument against § 87(2)(b) § 87(2)(g)
- § 87(2)(b) alleged that multiple officers at the scene used profanity with him. § 87(2)(g)
- PO Whooley admitted to using pepper spray against § 87(2)(b) § 87(2)(g)
- § 87(2)(b)'s physical description matched PO Vonfricken and his presence was corroborated by police documents. § 87(2)(g)

Investigative Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)
- § 87(2)(g)

Allegation A-Force: Officers used physical force against § 87(2)(b) at § 87(2)(b)

The type of physical force used against § 87(2)(b) is in dispute. According to § 87(2)(b) PO Torres and PO Whooley pushed him to the ground and tried to grab his arms. After he was handcuffed, officers pushed him into a door frame as they were exiting the house. Once § 87(2)(b) was in his front lawn, an unidentified officer pushed him to the ground and an unidentified police officer sat on him. As § 87(2)(b) was sitting himself up on the stretcher in the ambulance, PO Alfaro allegedly punched him in the stomach.

§ 87(2)(b) and police officers interviewed for this case did not say that officers pushed § 87(2)(b) against the door frame. They also said that an officer did not push § 87(2)(b) and sit on him. § 87(2)(g)

EMT § 87(2)(b) said that an officer did not punch § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

According to Patrol Guide Procedure 203-11, an officer may use the minimal amount of force necessary to overcome resistance and effect an arrest (encl. 1E). § 87(2)(g)

Allegation B-Force: PO Andrew Torres used a chokehold against § 87(2)(b) at § 87(2)(b)

§ 87(2)(b) alleged that PO Torres sat on his back and put him in a chokehold. PO Torres' arm was around § 87(2)(b)'s neck. § 87(2)(b) told the officers that he could not breathe and he started to wheeze. Although § 87(2)(b) and § 87(2)(b) noted that § 87(2)(b) said he couldn't breathe, they did not corroborate how PO Torres was positioned and they did not say that PO Torres had § 87(2)(b) in a chokehold. PO Torres denied sitting on § 87(2)(b)'s back and placing him in a chokehold, which was corroborated by PO Whooley. § 87(2)(g)

Allegation C-Force: An officer used a blunt instrument against § 87(2)(b) at § 87(2)(b)

§ 87(2)(b) felt an officer hit him with an object three to four times in the right elbow area while he was on the ground. Although § 87(2)(b) did not see which officer allegedly hit him, he said that this occurred before PO Ghani and PO Pineda arrived. Although § 87(2)(b) and § 87(2)(b) said that an officer hit § 87(2)(b) with a blunt object, they said that this occurred after PO Pineda and PO Ghani arrived. § 87(2)(g) § 87(2)(b) said that he thought the instrument was a flashlight and § 87(2)(b) said that the instrument was a night stick. It should be noted that § 87(2)(b) and § 87(2)(b) grossly exaggerated the force that was allegedly used against § 87(2)(b). They said that officers stomped on § 87(2)(b) hit him while he was in handcuffs, and dragged him out of the house. These allegations were not made by § 87(2)(b) § 87(2)(g)

PO Whooley and PO Torres denied using an object to hit § 87(2)(b) as did PO Pineda and PO Ghani. § 87(2)(b) resisted arrest and officers struggled to handcuff him on the ground for several minutes. § 87(2)(b) sustained a minor abrasion to his right elbow as a result of resisting arrest. He did not sustain injuries indicative of excessive or inappropriate force, given the circumstances. § 87(2)(g)

Allegation D-Discourtesy: Officers spoke rudely to § 87(2)(b) at § 87(2)(b)

§ 87(2)(b) alleged that an officer used profanity towards him while he was resisting arrest. He also alleged that multiple police officers used profanity towards him while he was inside the ambulance when it was parked outside of his home. The witnesses in this case, § 87(2)(b) and EMT § 87(2)(b) did not say that police officers used profanity towards § 87(2)(b). The police officers interviewed for this case denied using profanity with

§ 87(2)(b) Police officers and EMT § 87(2)(b) said that § 87(2)(b) was using profanity towards police officers and EMTs. This is also noted in police documents and medical records for § 87(2)(b) § 87(2)(g)

Allegation E-Force: PO Michael Whooley used pepper spray against § 87(2)(b) at § 87(2)(b)

Patrol Guide Procedure 212-95 indicates that pepper spray may be used when a member of service reasonably believes it is necessary to effect an arrest of a resisting suspect (encl. 1A). Pepper spray may be used in arrest situations where physical presence and or verbal commands have not been effective in overcoming physical resistance. § 87(2)(g)

Allegation F-Offensive Language: PO Jason Vonfricken used offensive language against

§ 87(2)(b) at § 87(2)(b)

§ 87(2)(b) alleged that while he was at § 87(2)(b) PO Vonfricken said, “What the fuck is wrong with you nigger?” PO Vonfricken also called § 87(2)(b) a “stupid cocksucker.” There were no witnesses for this allegation and PO Vonfricken denied making these comments to § 87(2)(b) § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: